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**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No. 1019/1/1/03  
1020/1/1/03  
1021/1/1/03  
1022/1/1/03

Victoria House  
Bloomsbury Place  
London WC1A 2EB.

19<sup>th</sup> May 2005

Before:  
SIR CHRISTOPHER BELLAMY  
(The President)  
BARRY COLGATE  
RICHARD PROSSER OBE

**BETWEEN:**

UMBRO HOLDINGS LIMITED	<u>Applicant</u>
and	
OFFICE OF FAIR TRADING	<u>Respondent</u>
MANCHESTER UNITED PLC	<u>Applicant</u>
and	
OFFICE OF FAIR TRADING	<u>Respondent</u>
ALLSPORTS LIMITED	<u>Applicant</u>
and	
OFFICE OF FAIR TRADING	<u>Respondent</u>
Supported by	
SPORTSWORLD INTERNATIONAL LIMITED	<u>Intervener</u>
JJB SPORTS PLC	<u>Applicant</u>
and	
OFFICE OF FAIR TRADING	<u>Respondent</u>
Supported by	
SPORTSWORLD INTERNATIONAL LIMITED	<u>Intervener</u>

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**PROCEEDINGS**  
**AFTER JUDGMENT HANDED DOWN**

## **APPEARANCES**

Miss Kelyn Bacon (instructed by Umbro Holdings Legal Department) appeared for Umbro Holdings Limited.

Mr George Peretz (instructed by Messrs Addleshaw Goddard) appeared for Allsports Limited.

Mr Mark Hoskins (instructed by DLA) appeared for JJB Sports PLC.

Mr Jon Turner (instructed by the Director of Legal Services, the Office of Fair Trading) appeared for the Respondent.

Mr. Rupert Anderson QC appeared on behalf of the Intervener

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1 THE PRESIDENT: On 1<sup>st</sup> October 2004 the Tribunal gave Judgment on the Appeals against  
2 liability by JJB and Allsports in this matter in relation to the OFT's decision of 1<sup>st</sup> August  
3 2003, finding infringements of the Chapter I prohibition and imposing penalties. Today we are  
4 handing down Judgment on the Penalty Appeals by the four Appellants who contested the  
5 amount of the penalty, namely, JJB, Allsports, Manchester United and Umbro.

6 For the reasons set out in the Judgment that we are handing down, we unanimously  
7 reach the conclusion that the penalties imposed upon the Appellant should be varied, and the  
8 Decision to that extent be set aside. We fix the penalties imposed on the Appellants as  
9 follows:

- 10 (1) JJB will pay a penalty of £6.7 million
- 11 (2) Allsports will pay a penalty of £1.42 million
- 12 (3) Manchester United will pay a penalty of £1.5 million
- 13 (4) Umbro will pay a penalty of £5.3 million.

14 Save as aforesaid the appeals are dismissed.

15 There will be interest on the penalties to run, subject to any further submissions the  
16 parties wish to make, at 1 per cent. above the Bank of England base rate from the dates when  
17 the respective appeals were lodged with the Registry until payment or judgment under section  
18 37(1) of the Act.

19 That being the Judgment of the Tribunal the original intention of this handing down  
20 today was that this would be a formal occasion for handing down and we would not, in fact,  
21 deal with any outstanding contentious issues. We signalled to the parties that we would be  
22 glad to hear any observations they had on an outstanding application by Sportsworld  
23 International to be admitted as an intervener in this case without, I have to say, anticipating  
24 that there would be opposition to that intervention as a formal step in the proceedings. There  
25 is, however, opposition to it, so the fact of that intervention, which is related to the issues for  
26 costs, turns out to be contentious.

27 There are also, we are given to understand, possible applications for permission to  
28 appeal that would no doubt be also contentious; and there is in addition the question of costs.  
29 So the question that now arises is how we should proceed today. We only have three out of the  
30 four Appellants present because I do not think Manchester United is present. What we would  
31 propose to do in the first instance, if we may, is simply invite each of the parties who are  
32 present to indicate how they would wish to proceed today, if at all, and what is the best way of

1 dealing with the remaining issues in this Appeal. So if we may do that first then we will  
2 decide how we are going to proceed.

3 I think it is probably for you, Mr. Hoskins, if you would be so kind, just to let us  
4 know what your position is?

5 MR. HOSKINS: Since I am the one causing the most problems, that is probably correct.

6 THE PRESIDENT: Well let us not put it like that! It is all in a day's work as far as we are  
7 concerned, but we will have to find a practical solution, I think.

8 MR. HOSKINS: Sir, there are three things on the agenda then – permission, intervention and costs.

9 THE PRESIDENT: Yes.

10 MR. HOSKINS: I would like to make an oral application for permission to appeal today and I would  
11 like it to be resolved today. I intend to make submissions to you under two main heads. One,  
12 in the light of the OFT's opposition to my making the application today, why I would like to  
13 make it today and why I think it can and should be dealt with today; and secondly, obviously if  
14 you are prepared to hear me today I would make the application for permission, and that  
15 would be short – 10 minutes maximum. I should say in light of the indication that was given at  
16 the Toys hearing, I have prepared some draft grounds which I can hand up which will  
17 hopefully speed matters up on that. So that is permission to appeal.

18 In relation to intervention, in response to the Tribunal's letter we did put in some  
19 written submissions which I hope you have?

20 THE PRESIDENT: We have indeed, and we have read them.

21 MR. HOSKINS: I can obviously take you through them if necessary, but obviously it is for  
22 Mr. Anderson I would have thought primarily to respond to those and that is the way to take  
23 that forward.

24 THE PRESIDENT: Yes, so you have made your position clear in the ----

25 MR. HOSKINS: Obviously, if there is anything you need me to clarify I will, but hopefully it is  
26 drafted fairly clearly to make our point.

27 THE PRESIDENT: Yes, I think it is. It is very clear, Mr. Hoskins, yes.

28 MR. HOSKINS: In relation to costs that is probably for another day and it is probably just  
29 a question of directions about how it is to be dealt with.

30 THE PRESIDENT: Yes.

31 MR. HOSKINS: I do not think any one has come prepared to deal with costs.

32 THE PRESIDENT: No, yes, thank you. Yes, Mr. Peretz?

1 MR. PERETZ: My position is that I am not instructed to make an application for leave to appeal  
2 today on that issue. On the issue of intervention by Sportsworld we, likewise, oppose that  
3 application for intervention. Unfortunately, since I was in the Tribunal myself yesterday in  
4 a different case I have had rather limited opportunity to prepare anything, but fortunately  
5 Mr. Hoskins has saved me that labour and I can simply agree with what he says on that issue.  
6 That is my position.

7 On the question of costs it seems to us obvious that that will have to be dealt with at  
8 a later date, I do not think any of us are ready to deal with that today.

9 THE PRESIDENT: Very well. Yes, Miss Bacon?

10 MISS BACON: I also do not have an application for permission to appeal. As for the matter of  
11 intervention, I understand from Mr. Anderson that any costs are not sought against Umbro so  
12 I do not have any comments on Sportsworld's application to intervene. As for our costs, I am  
13 content for that to be left over for another date.

14 THE PRESIDENT: Yes, if I could just clarify in relation to both Allsports and Umbro, and I do not  
15 want to put words into anybody's mouth, one of the difficulties of dealing with possible  
16 applications for permission to appeal is that we have four parties in this case; one of them is  
17 not here today, and we would not want to get into a position of having to deal with applications  
18 for permission to appeal piecemeal, as it were. The time for making applications is set out in  
19 the Rules – there is obviously some way to go. All that we have been told by Allsports and  
20 Umbro is that they are not making an application today and I do not know whether at this stage  
21 we are entitled to draw any further inference beyond that statement.

22 MR. PERETZ: In our case it would be unwise to draw any inference.

23 THE PRESIDENT: We should not draw any inference?

24 MR. PERETZ: You should not draw any inference.

25 THE PRESIDENT: No inference to be drawn, yes. Yes, Miss Bacon, I am not trying to draw you,  
26 I am just simply speaking aloud, as it were, our thoughts.

27 MISS BACON: No, I would prefer to be treated in the same position as Mr. Peretz, for no inferences  
28 to be drawn.

29 THE PRESIDENT: No inferences to be drawn. Yes, I think it is Mr. Turner then?

30 MR. TURNER: Sir, taking the three points in turn. On permission to appeal, no objections to  
31 Mr. Hoskins indicating his client's position, but we submit it is not efficient for that to be dealt  
32 with today. The Office is not in a position to deal adequately with the matter, and perhaps the  
33 Tribunal may not be best placed to deal with it. It is a complex issue. We have just received

1 now the draft grounds of Appeal. The Judgment is not fresh in anyone's mind, it was delivered  
2 some time ago and involves complex issues. It would be better and most efficient to defer  
3 applications for permission. So far as costs are concerned, I believe all parties have proceeded  
4 on the basis that that will be dealt with on a later day in accordance with the Tribunal's letter.

5 THE PRESIDENT: Yes.

6 MR. TURNER: So far as intervention is concerned by Sportsworld International, the Tribunal will  
7 also have received, I hope, our skeleton on the matter, as well as Mr. Hoskins'?

8 THE PRESIDENT: Yes.

9 MR. TURNER: We are able to make some observations on Mr. Hoskins' skeleton if the Tribunal  
10 would find that of assistance. Obviously no one today will go into the underlying issue of the  
11 costs. It may be thought sensible because the merits may bear on the formal application, to  
12 hear them together and so for that reason we would respectfully submit that it would be better  
13 to hear them together at a later date, but as I say I am prepared to deal with the procedural  
14 matters now if the Tribunal would wish us to do so.

15 THE PRESIDENT: Thank you. Yes, Mr. Anderson?

16 MR. ANDERSON: Mr. President, I too am in a position to make some observations on the  
17 opposition to our intervention, but for reasons that I think we indicated in general terms in  
18 a letter, we have not had as much time as we would have preferred to prepare a full case in  
19 support of our application which is, as the OFT have indicated in their skeleton, not just an  
20 application to intervene, it is an application to intervene if it is necessary to intervene in order  
21 to make good an application for costs.

22 THE PRESIDENT: You primarily say it is not? Or it is one of the points you say.

23 MR. ANDERSON: We would say in the alternative, that if it is a precondition to seeking costs then  
24 we clearly have had, continue to have and at all times had a sufficient interest for the purposes  
25 of intervention and essentially what it will boil down to is a question of your discretion to  
26 permit us to intervene in order to hear the application for costs and the points that Mr. Hoskins  
27 makes in his skeleton we think are not good points, indeed, you do at the end of the day have  
28 jurisdiction and we would be inviting you to exercise that jurisdiction in our favour if it is  
29 necessary. Clearly, the two issues as to whether it would be right to exercise that jurisdiction  
30 and the underlying merits of our costs' application are closely related and we see considerable  
31 merit in those two issues being addressed together because they cannot sensibly be divorced  
32 entirely.

33 THE PRESIDENT: Yes.

1 MR. ANDERSON: So we agree with counsel for the OFT that it might be better to put this issue off  
2 until the costs hearing that you have indicated, I gather, in a letter to the parties that you intend  
3 to hold.

4 THE PRESIDENT: Yes. Do you want to come back quickly on that, Mr. Hoskins?

5 MR. HOSKINS: Just simply on intervention, I have not received a copy of the OFT's skeleton, and  
6 nor have I received a copy of Sportsworld's letter, so I am handicapped today – I do not know  
7 where that has gone wrong in the system, but I just have not seen them. So in terms of how we  
8 take this forward I thought it was important you should know.

9 THE PRESIDENT: Yes, thank you for telling us that, Mr. Hoskins.

10 (The Tribunal confer)

11 THE PRESIDENT: We are just going to rise.

12 (The hearing adjourned at 2.15 p.m. and resumed at 2.25 p.m.)

13 THE PRESIDENT: Mr Hoskins, first of all, having read the submissions that we had already read  
14 we are at this stage satisfied that if and insofar as Sportsworld International needs permission  
15 to intervene in order to argue its position on costs that we would allow that intervention. We  
16 will give our reasons at a later date. It does not seem to us useful for the parties now to incur  
17 further costs in seeking to argue that point, which we will deal with in whatever Judgment we  
18 finally deliver. So Sportsworld International is now admitted as an intervener in the case.

19 It is common ground that the issue of costs will have to go off to another date anyway,  
20 so I think we are looking at a further hearing date of some sort. In those circumstances, we are  
21 not in favour of hearing oral argument on your application for permission to appeal today for  
22 several reasons. First, it is undesirable we think to deal with applications for permission to  
23 appeal in a multi-handed case piecemeal. We do not have Manchester United here today.  
24 Allsports and Umbro have very properly reserved their position. They have a month in which  
25 to decide whether they are going to seek permission to appeal or not. It is undesirable, we  
26 think, to canvass the question of appeal until it is clear who exactly is appealing and who is  
27 not, and that will not be clear for some time.

28 In addition to that, we are conscious that the respondent OFT would be in difficulties  
29 in responding to an appeal today, having only just received the grounds of appeal, and not  
30 having had an opportunity to consider that, in addition to which the Tribunal itself is conscious  
31 of the fact that there is a 300 page Judgment on liability and a further Judgment on penalties,  
32 which cover quite complicated grounds and, in order to do justice to an application for  
33 permission to appeal – assuming it to be a serious application which, of course, we do assume

1 – we the Tribunal would need time to refresh our own memory of the content of the Judgment  
2 and the various points that arise. So in any event, our view is that we would not be able to deal  
3 today with an application for permission to appeal, partly because we do not feel it would be  
4 fair to call upon the OFT to respond, and partly because we are not satisfied that we ourselves  
5 would be in a position to do justice to such an application today made on the hoof, as it were.  
6 It may very well be that it is not necessarily in your client’s interests, if we may say so  
7 respectfully, to press us to try to deal with the matter today because we would like time to deal  
8 with your client’s case as carefully as possible.

9 We take note of JJB’s strong indication that they strongly wish to pursue an appeal  
10 and that is on the record, but we think it better, if we may say so, to defer actually hearing that  
11 until a later date when the various matters I have just mentioned have sorted themselves out.  
12 So I think that is our position at the moment on that.

13 MR. HOSKINS: Sir, can I take instructions very quickly?

14 THE PRESIDENT: Yes.

15 MR. HOSKINS: (After a pause) Sir, obviously I have heard what you have said, by my client’s  
16 instructions are that I would very briefly like to explain why we would like to make the  
17 application today and why we believe it can be dealt with today, and if you would allow me  
18 five minutes I will make those submissions. I obviously have heard what you have said, but  
19 I would like the opportunity to persuade you otherwise, if I may.

20 THE PRESIDENT: Yes.

21 MR. HOSKINS: Sir, the first thing is that obviously the Rules provide for two alternative ways of  
22 applying for permission – it is Rule 58 of the CAT Rules I am thinking of. An application can  
23 be made orally when Judgment is handed down or in writing within one month of the handing  
24 down. In our submission we have a right to make an oral application for permission rather  
25 than a written one, and whatever view the Tribunal takes today of the timing of this application  
26 we would like to be able to make an oral application at some stage rather than a written one.

27 I will explain in a minute why we take that position.

28 THE PRESIDENT: I thought you had just circulated some written grounds?

29 MR. HOSKINS: Some grounds, yes, but only the grounds.

30 THE PRESIDENT: Only the grounds.

31 MR. HOSKINS: Because the Tribunal indicated that that would be helpful at the “toys” hearing so  
32 that is why we produced them.

33 THE PRESIDENT: Indeed it is, yes.

1 MR. HOSKINS: But they are simply grounds. Sir, in relation to the OFT being in difficulty and the  
2 Tribunal being in difficulty, our submission is this: it is normal practice in the High Court,  
3 even in the most complex matters, for applications for permission to appeal to be dealt with by  
4 way of very short oral submissions, 10, 15 minutes, perhaps, when the Judgment is handed  
5 down. In our submission it would not be desirable for the Tribunal certainly to establish  
6 a practice requiring detailed written and oral submissions to deal with the question of  
7 permission. Our submission is that that road would be, contrary to what the OFT says,  
8 inefficient and unnecessarily expensive.

9 My own client's position is that we have already expended substantial sums in  
10 defending ourselves before the Tribunal, and we say that we should not be required to expend  
11 further substantial sums preparing written reasons why we would like permission to appeal;  
12 that is primarily why we would like to make our application orally because we think it can be  
13 done simply and shortly.

14 Sir, applications for permission to appeal are intended to be rough and ready. It  
15 would not be appropriate, we say, to treat an application for permission to appeal as some sort  
16 of retrial of the hearing in which we put forward arguments where we say "You did not accept  
17 these arguments but here are some more", or "we think you should have accepted them  
18 because", and the OFT comes back otherwise. With all due respect nor would it be  
19 appropriate, we say, for the Tribunal to be required to revisit its liability Judgment in this case  
20 in any detail. We have the Judgment, the Tribunal has pronounced, and the next natural stage,  
21 if permission is given, is for the Court of Appeal to consider that. So we say it is wholly  
22 wrong to try and create a system which requires detailed written submissions or permission to  
23 appeal followed by a detailed written Judgment.

24 Why should we be heard today? Rule 58(1) does say that the principle is that an  
25 application for permission can be made orally at any hearing at which the decision is delivered.  
26 We have had the liability judgment and the time for appealing was postponed until today  
27 obviously, because that was sensible, but the liability judgment was delivered on 1<sup>st</sup> October  
28 2004. It contains very serious findings in respect of my client and, in our submission, we  
29 should not be required to wait any longer to bring the appeal. My clients are keen to get on  
30 with the appeal.

31 In relation to the piecemeal application, we simply do not know what is going to  
32 happen with the other parties. Certainly in relation to Umbro there is no common thread  
33 whatsoever between Umbro's case and our case. So if Umbro were to appeal it is going to be

1 on a completely separate basis from us. Manchester United, in relation to penalty there were  
2 certain common arguments but again there is very little common ground, and obviously we do  
3 not know whether Allsports are going to appeal or not. But if you will hear me today and I am  
4 allowed to make these submissions (and they will take about 10 minutes) I submit that  
5 Mr. Turner is certainly capable of responding to them, they are headline points, because that is  
6 all permission to appeal is going to be, and the Tribunal should hear that and should simply say  
7 “yay” or “nay” today, and that is our position. But I do want to emphasise that I do intend to  
8 take 10, maximum 15 minutes in making the application – no more.

9 THE PRESIDENT: Thank you. Mr. Turner, do you want to respond to that?

10 MR. TURNER: For our part we would have no objection to Mr. Hoskins developing his grounds  
11 orally at a later date, which was his first point, if that proved to be helpful to the Tribunal. So  
12 far as the point goes that it is normal practice in the High Court for there to be a short oral  
13 application for permission, it would be wrong to think that that was either a uniform or an  
14 invariable rule. I have recently had experience myself, and know all too well it depends on the  
15 circumstances. Here, as the Tribunal said, you have complex Judgments amounting together to  
16 roughly 400 pages, with one of those Judgments delivered many months ago; and another  
17 appellant (potentially) on liability, Allsports, whose position is uncertain. It cannot be the  
18 efficient course for the Tribunal to try to deal with the application for permission today, even if  
19 Mr. Hoskins is prepared to make it and leave it at that. He says that his clients are keen to get  
20 on with the appeal finally, but if the Tribunal is not in a position to deal with it straight away,  
21 as it is not, then no time is going to be saved. So for those reasons it would not be right for the  
22 matter to be telescoped into a hearing today. It will not be efficient.

23 (The Tribunal confer)

24 THE PRESIDENT: I think, Mr. Hoskins, on your first point, if you want to confine yourself to  
25 making an oral application that is up to you – it is not necessarily a particularly convenient  
26 course from the Tribunal’s point of view, but if that is what you wish to do, we are not going to  
27 stop you from doing it. The question as to whether you wish to make that oral application  
28 today and whether that is an efficient use of everybody’s time this afternoon is, I think,  
29 a separate question.

30 Our present view is that, even if we were to allow you to make it, we are not going to  
31 deal with it today, and we are not going to deal with it today for at least three reasons. First,  
32 because we understood Mr. Turner to say that he was not in a position fully to respond to it  
33 today,

1           Secondly, we are not prepared to deal with any appellant’s appeal on a final basis  
2 until we know who is appealing and who is not, because it would be wrong to pre-empt any  
3 application by another appellant, such as Allsports at a later point, which ever way we had  
4 ruled, without giving Allsports a proper opportunity to develop whatever arguments it chose to  
5 develop should it decide to appeal; and thirdly, the Tribunal itself has not had the opportunity  
6 to go back over what is a very complex liability Judgment and fully resituate itself in the  
7 context in which that Judgment was given.

8           We, for our part, would not accept that applications for permission to appeal should in  
9 this Tribunal be done in what you described as a “rough and ready” way. It is not at all always  
10 the case, either in the High Court, or at the level of the Court of Appeal that the stage of  
11 applying for permission to appeal is treated in a rather short way. Certainly at this stage in the  
12 Tribunal’s life – without making the procedure unduly heavy, which is a perfectly fair point –  
13 we would wish to give your application the full consideration that it deserves, and we are  
14 certainly not in a position to rule on it today even if you make it. So the only question that  
15 remains is whether you actually want to make it knowing that we are not going to deal with it,  
16 and we will not deal with it until the time for appealing by the other Appellants has expired, so  
17 you are not actually saving any time.

18 MR. HOSKINS: Sir, in the light of those indications there is no point in making it today.

19 THE PRESIDENT: I think that is right, and I do think it is in your client’s interest to keep powder  
20 dry for a little longer and see where we are, and develop it at a stage when we have all, as it  
21 were, put ourselves back into the framework of the case, and we are able to give your  
22 application the fullest possible and informed attention, which I think in the long run will be  
23 better for everybody.

24 MR. HOSKINS: Sir, the only issue that that raises is obviously the time for appealing was extended  
25 until – I think the way it would work would be one month from today in writing. As I have  
26 said, we would like to make short oral submissions at some stage.

27 THE PRESIDENT: Yes, well we will extend your time to make an oral application until further  
28 order, until we are able to hear it basically. I think that is the right order, until a date to be  
29 fixed for such an oral application.

30 MR. HOSKINS: That would certainly plug the gap.

31 THE PRESIDENT: Yes, that would fill the gap, if I may say so. Mr. Colgate’s question is that the  
32 existing extension technically arises in relation to the liability Judgment. There is now a

1 further month for the penalty Judgment, we are extending it until an oral application for the  
2 whole case, I imagine?

3 MR. HOSKINS: Sir, yes, I would like to have an opportunity to make oral submissions for  
4 permission to appeal in relation to both liability and penalty.

5 THE PRESIDENT: Yes, very well. Yes, Mr. Peretz?

6 MR. PERETZ: Nothing at all should be read into this, but I think it would be appropriate for a  
7 similar order to be made in my client's case. At the moment we have 30 days from today in  
8 which to apply, but it seems to me we should be treated in the same way as JJB in this respect  
9 in terms of an extension of time.

10 THE PRESIDENT: Well do you want to make an oral application, or do you want to make a written  
11 application?

12 MR. PERETZ: I would like to reserve my position on that, but I would like to have the option of  
13 doing so. It seems the simplest thing would be to make the same order for us as for JJB. As  
14 I say, nothing is to be read into this, but it just seemed to me right, as a matter of principle.

15 THE PRESIDENT: Well, JJB have indicated they do not wish to make an application in writing.  
16 How would we frame an order in Allsports' case?

17 MR. PERETZ: Well, I am slightly puzzled as to how you are going to frame an order in JJB's case.

18 THE PRESIDENT: We will think of a way, Mr. Peretz.

19 MR. PERETZ: One is tempted to say whatever way is appropriate for JJB should work for us too.  
20 I think the main point is to make sure that our 30 day period is extended. If the position is that  
21 if the application is not going to be heard for 40 or 50 days because of the Tribunal's timetable  
22 we will need an extension, and if JJB still have the right to appeal some time in late June it  
23 seems to me that we should have the right to appeal in that time as well.

24 THE PRESIDENT: Can we just come back to this point because I think it probably does take us on  
25 to timetabling issues. Mr. Turner, I think we look across to you now, if we may. The time for  
26 appealing will expire about the third week of June.

27 MR. TURNER: Yes.

28 THE PRESIDENT: The Tribunal has a window in the week beginning 11<sup>th</sup> July and it might be  
29 convenient, and this is what I would like now to canvass, if we could have a hearing at some  
30 stage during that week and deal with all outstanding issues in these cases. Now that slightly  
31 depends on what your position is on costs. We know Mr. Anderson has a position on costs.  
32 You may not have had time to take any instructions on issues of costs, but in an ideal world,  
33 what I think we would do, and we may not be able to do it today across the table with diaries in

1 our hands, but at least have a general idea, is to fix some sort of timetable for submissions on  
2 costs and hear applications for permission to appeal and costs on the same occasion.

3 MR. TURNER: Sir, subject to instructions concerning the date, the precise window, that would  
4 seem sensible to the Office. In terms of our position on costs I can say that we have not finally  
5 internally absorbed the implications of the Judgment which has just been handed down today  
6 and how that might bear on the overall position, and we would need some time to do that. We  
7 agree and would welcome the idea of a consolidated hearing to deal with all issues, perhaps in  
8 the week beginning 11<sup>th</sup> July, if that suits everybody, it seems sensible, with skeletons in  
9 advance.

10 THE PRESIDENT: I think the first step is that it is up to the OFT to take a position on whether, to  
11 what extent and against whom it is actually seeking some costs, so I think we would need to  
12 know that within a reasonable time in order to plan.

13 MR. TURNER: Yes.

14 THE PRESIDENT: If you are not, or if you are only seeking costs on some limited basis against  
15 certain appellants or whatever, it changes the planning a bit.

16 MR. TURNER: Yes.

17 THE PRESIDENT: So how long would you like to have in order to give us a first indication of  
18 whether you are going to seek costs or not?

19 MR. TURNER: If I may just take a moment? (After a pause) We can deal with it in a week.

20 THE PRESIDENT: Well what I am inclined to say, subject to the observations of the parties, is that  
21 the OFT should signal to the Tribunal within seven days what its intentions are as regards  
22 costs. In the light of that the Registry, in consultation with the parties, will fix a timetable for  
23 any skeleton arguments that may be necessary or other preparatory steps that may be necessary  
24 in order to allow us to have a hearing in the week beginning 11<sup>th</sup> July to deal with all  
25 outstanding matters, including permission to appeal, costs as regards the OFT and costs as  
26 regards Sportsworld.

27 Mr. Anderson, you have already made your submissions on costs, I do not know that  
28 you need to make any more beyond what you have already put in, do you?

29 MR. ANDERSON: I do not think we would be envisaging putting in anything more in writing. We  
30 have sought to set out in our application categories in which we were seeking costs which were  
31 not, of course, all our costs but I will develop that orally – I may put in a short skeleton  
32 argument.

1 THE PRESIDENT: But we have had all the written stuff we need to have from you for the time  
2 being, it is just a question of oral argument.

3 MR. ANDERSON: Yes, and the week beginning the 11<sup>th</sup> July would suit us. If I could just mention  
4 one matter? Obviously, we do not want to sit through permission arguments, so if the two  
5 aspects of that day could be somehow split so that we could be excused from the permission  
6 side of the argument that would save certainly us time and costs.

7 THE PRESIDENT: Yes, thank you very much. That may be as far as we can take it at the moment,  
8 Mr. Hoskins, Mr. Peretz.

9 MR. HOSKINS: If I may make two very brief observations? In terms of fixing a timetable, can  
10 I suggest that any skeletons be sequential, because obviously it is useful to know what the OFT  
11 is asking for.

12 THE PRESIDENT: No, quite, the OFT first, then whoever is responding, responding on costs  
13 issues, but on permission issues up to now you have served grounds – perhaps you would be  
14 kind enough to serve them on the Tribunal as well?

15 MR. HOSKINS: Certainly, of course.

16 THE PRESIDENT: You are not proposing to develop those grounds further in writing, and you  
17 indicated you are only going to develop them orally for 10 or 15 minutes?

18 MR. HOSKINS: Correct, yes.

19 THE PRESIDENT: And we can proceed on that basis from the point of view of your permission  
20 application?

21 MR. HOSKINS: I should say in relation to the grounds I am obviously happy to hand them up now.  
22 We may work on them between now and then ----

23 THE PRESIDENT: If I was feeling unkind I would pin you to the grounds you have just served, but  
24 if you want ----

25 MR. HOSKINS: Sir, they have a footnote saying “Draft Grounds”.

26 THE PRESIDENT: Well you can’t have it both ways! (Laughter)

27 MR. HOSKINS: I am trying to be helpful, but they will not change dramatically, but they may be  
28 tightened up. It is just in relation to the Penalty Judgment, we have had a day to look at it.  
29 I appreciate it is always difficult, the week beginning 11<sup>th</sup> July, insofar as it is possible, if there  
30 could be some consultation between the Registry and counsel to make sure of availability,  
31 I appreciate the Tribunal is paramount but if there could be some consultation about that.

32 THE PRESIDENT: Yes, we will see because we have diary problems and problems of our own.

33 MR. HOSKINS: I understand that.

1 THE PRESIDENT: Is that as far as we can take it, Mr. Turner?

2 MR. TURNER: Arising out of what Mr. Hoskins has just said, I would like to avoid a situation in  
3 which we still do not know what their full grounds of appeal are until the next hearing. In view  
4 of the reservations Mr. Hoskins has just made, might I suggest that he puts in his final grounds  
5 for appeal in good time at the very least, and then we can put in a skeleton in which we address  
6 those grounds within the appropriate timescale.

7 THE PRESIDENT: Well, having just said to the OFT that we would like to hear what their  
8 intentions are on costs within seven days, Mr. Hoskins, is it unreasonable to ask you to serve  
9 your final grounds within seven days, since you were prepared to advance them today?

10 MR. HOSKINS: Perfectly reasonable, Sir.

11 THE PRESIDENT: If you do that we will then settle sequentially what the responses are thereafter.  
12 I think that is as far as we can get for the time being. Thank you very much.

13 (The hearing concluded at 2.55 p.m.)